

CENTER ON RACE, POVERTY & THE ENVIRONMENT

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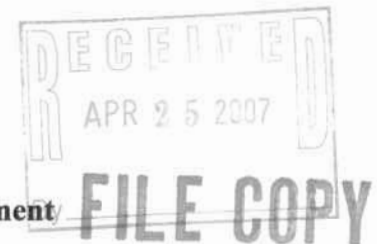
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California Integrated Waste Management Board
Diana Suarez-Arguelles
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Re: San Bernardino County's Nondisposal Facility Element Amendment

Dear California Integrated Waste Management Board:

San Bernardino County recently submitted a proposed amendment to its Integrated Waste Management Plan Nondisposal Facility Element ("NDFE") which includes Nursery Products, LLC's sewage sludge composting facility near Hinkley, CA. In approving the proposed amendment, San Bernardino County violated the notice and comment provisions of 14 CCR § 18765. In addition, San Bernardino County has not provided the required facility information as part of its proposed amendment. As such, the Center on Race, Poverty & the Environment and Helphinkley.org urge the California Integrated Waste Management Board (CIWMB) to determine that the application for the proposed amendment is incomplete at this time, and will not be complete until the Solid Waste Advisory Task Force (SWAT) has been provided an opportunity to view and comment on the amendment as submitted.

It is important that SWAT participate in the NDFE because it is the role of such a Local Task Force ("LTF") to review the NDFE and take part in its implementation. 14 CCR § 18761(a). It is the duty of the LTF to "provide technical guidance and information regarding source reduction, waste diversion and recycling to local jurisdictions during preparation and revision of the SRRE, HHWE and NDFE." 14 CCR § 18761(b). This information is important because it can "be

presented to the general public at public hearings and upon request by members of local government and community organizations.” 14 CCR § 18761(b). Public participation is key to creating an effective plan. The failure of the Board of Supervisors to comply with its requirements to provide the SWAT with its altered amendments to the NDFE denies San Bernardino County residents of the benefits of an NDFE that has been through the legally required technical review and public review processes.

I. SWAT Was Not Given Adequate Opportunity to Comment

The California Code of Regulations requires that “(n)inety (90) days prior to the public hearing for the adoption of the NDFE, the jurisdiction shall send a copy of the **final draft** NDFE to the [LTF] for review.” 14 CCR § 18765(b) (emphasis added). In April 2006, San Bernardino County provided to SWAT what appears to be a project proposal for the Nursery Products, LLC Hawes Composting Facility. (See attachment A). The final project, as approved by the Board of Supervisors, differs from the project description in this document. Moreover, there is no evidence that SWAT was given a copy of the final draft of the amendment at that time. Since SWAT never received the final draft of the NDFE, San Bernardino County failed to satisfy the conditions of 14 CCR § 18765.

In addition, state policy encourages public participation in the process to adopt an amendment to the Countywide Integrated Waste Management Plan. *See* 14 CCR §18766. The public attempted to participate in this process at the SWAT hearing on April 20, 2006. However, the Chair of the Board informed the public that the Nursery Products amendment was not on the agenda for that day. When members of the public recounted this misleading statement at SWAT’s next meeting on October 18, 2006, the Task Force unanimously voted to reconsider Nursery Product’s facility at their April, 2007 meeting. If the County submits the final draft of the proposed NDFE amendment to SWAT, this meeting would be the proper time to commence the 90-day comment period.

II. The Board Has Circulated Inaccurate and Inconsistent Proposed Amendments

San Bernardino County has circulated several different versions of the proposed amendment, each of which contains different information. In addition to the document provided to SWAT, there are at least two other versions of the amendment: a January 2007 version, and a March 2007 version. (See attachments B and C). The information provided in each document is inconsistent.

The document provided to SWAT indicated the diversion rate was to be 2,000 tons/day while the January version stated that only 1,100 tons/day would be diverted. The March version attempted to sidestep the entire issue by not giving a diversion rate at all. The January version stated that the participating jurisdictions include “San Bernardino County and surrounding jurisdictions”. However, the March version lists only San Bernardino County. The document provided to SWAT did not identify this information at all. Because the County has circulated so many versions of the amendment and each contains different information, the County cannot have

complied with the California Code of Regulations as SWAT did not have the opportunity to comment on the final draft, and it is unclear which version San Bernardino County actually adopted.

III. The Amendment Does Not Include Sufficient Information on Anticipated Diversion Rates, Facility Capacity, or Participating Jurisdictions

The California Code of Regulations only requires the most basic facility information be included in a proposed amendment of a Countywide Integrated Waste Management Plan. 14 CCR § 18753. This information includes the facility's name, the type of facility, the location, the facility capacity, the anticipated diversion rate, and participating jurisdictions. *Id.* The proposed amendment for Nursery Products fails to provide complete information on three of the six categories. For this reason, the Board should make a determination that the proposed amendment is incomplete.

A. Anticipated Diversion Rate and Capacity

The proposed amendment, as attached to the Board of Supervisors hearing agenda for March 20, 2007, specifies that the anticipated diversion rate will be 1,100 tons/day and that total capacity is 400,000 tons. However, the document does not disclose the units that it uses to make this calculation. Without disclosing whether or not the anticipated diversion rate uses wet tons or dry tons, the proposed amendment can be misleading. This omission is significant as one (1) wet ton may equal up to five (5) dry tons or more (depending on sewage sludge consistency). Thus, the diversion rate may range from 220 tons/day to 5,500 tons/day, and the capacity may range between 80,000 to 2,000,000 tons/year. The County must correct this omission and recirculate the document to SWAT for comments.

B. Participating Jurisdictions

The proposed amendment, as attached to the agenda, states that there will be multiple jurisdictions involved in the project. However, it specifies only one of them - San Bernardino County. The rest of the participating jurisdictions are left unstated. The regulations provide a low hurdle, yet the applicant fails to provide even the most basic information required for an amendment. Again, this information is important, as the applicant has withheld this information throughout the environmental review of the facility. It is still unclear where the waste will originate and until the applicant can provide this information with specificity, the amendment should be considered incomplete.

The Center on Race, Poverty & the Environment, Helphinkley.org, and interested individuals raised each of these issues at the San Bernardino Board of Supervisors hearing on March 20, 2007. The Board of Supervisors did not contest these procedural and substantive errors but nonetheless ignored requests to postpone the hearing until after SWAT has an opportunity to consider the application at its April meeting. For these reasons, we are asking that CIWMB make a finding that the application for an amendment to San Bernardino's Waste Management Plan, Nondisposal Element is incomplete until the County can comply with the California Code of

Board Meeting
July 17, 2007

Agenda Item 1
Attachment 1

Regulations. The SWAT cannot fulfill its role of providing valuable technical expertise and the public cannot participate if the County Board of Supervisors does not fulfill its obligations to provide the LTF with a final draft of the amendment to the NFDE.

Please feel free to contact me if you have any questions on the issues raised in this letter.
Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ingrid Brostrom", written over a horizontal line.

Ingrid Brostrom
Staff Attorney